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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,473	02/26/2004	Donis George Flagello	081468-0308089	9303

909 7590 06/05/2006

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EXAMINER

FULLER, RODNEY EVAN

ART UNIT PAPER NUMBER

2851

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/786,473

Applicant(s)

FLAGELLO ET AL.

Examiner

Rodney E. Fuller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 8-24 is/are pending in the application.  
4a) Of the above claim(s) 1-6, 8-11, 23 and 24 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 12-22 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 14 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Rodney Fuller  
Primary Examiner

*R. S. J.*

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Remarks***

In response to the Office Action mailed December 20, 2005, the applicant canceled claims 7 and 25-32. Claims 1-6 and 8-24 are pending.

In the Office Action mailed December 20, 2005, claims 1-11 and 23-32 were withdrawn from further consideration pursuant to 37 CFR 1.142(b). Nevertheless, the applicant amended claims 1 and 23 (independent claims) and has made the argument that the claims are no longer restrictable. The examiner has not considered the applicant amendments to claims 1 and 23 since claims 1-11 and 23-32 were withdrawn from consideration in the prior Office Action.

Regarding the Double Patenting rejection of claims 12-22 as being unpatentable over claims 1-10 of U.S. Patent No. 6,943,941 (Flagello, et al.) in view of Sabia, et al. (US 2003/0206347), the applicant has made the argument that the instant application was filed as a Divisional under 35 USC 121 because of a requirement to restrict and that the rejection is thus improper according to MPEP 804.04.

The examiner notes that the instant applicant is a continuation-in-part (CIP) of application 10/374,509 instead of a divisional (DIV) application. Secondly, it does not appear that instant application was filed because of a requirement to restrict set forth in the parent application 10/374,509. The restriction requirement set forth in application 10/374,509 divided the claims into three groups: I (claims 1-16, 23, 24, 27 and 28) drawn to a polarizer; II (claims 17-22) drawn to a lithographic projection apparatus, and III (claims 25 and 26) drawn to a method of manufacturing a device. Further, an

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election of four species were set forth. The applicant elected invention II (claims 17-21) and species B. Claims 10-17 and 20-22 were prosecuted. Claims 10-16 were canceled after being rejected.

The instant application does not appear to be directed to claims non-elected in the parent application 10/374,509. The present claims appear to be directed to the same claims as elected in the parent (claims 17-22) (claims 32-37 added during prosecution) with the addition of new subject matter not included in the parent application. The limitation "wherein the elongated elements are coated with a thin layer of absorbing material" appears to be new subject matter added to the present CIP application.

Thus, the examiner maintains that the double patenting rejection set forth in the Office Action mailed December 20, 2005 is proper.

***Doubl Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 12-22 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,943,941 (Flagello, et al.) in view of Sabia, et al. (US 2003/0206347).

Claims 12-17 and 19 correspond to claim 1 of Flagello (US 6,943,941) except for the added limitation wherein the elongated elements are coated with a thin layer of absorbing material (claim 1), selected from the group  $\text{Al}_2\text{O}_3$  and anodic oxidized aluminum (claim 19).

Sabia (US 2003/0206347) discloses that optical components, such as polarizers, generally require anti-reflection coatings (or an absorbing coating) to prevent back reflection due to differences in refractive index between the component and an air gap.

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Further, Sabia discloses that  $\text{Al}_2\text{O}_3$  is a typical coating used for such applications. (See Sabia, paragraph 0041, lines 3-8, 11-15). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Flagello by including thin layer of  $\text{Al}_2\text{O}_3$  on the elongated elements of the polarizer in order to prevent back reflections and prevent unwanted stray light in the projection system and exposure of the substrate.

Further, claims 18, 20, 21, 22 correspond to claims 5, 2, 3, 4 respectively.

Note: The pending claims set forth that the coating on the polarizer is an "absorbing layer," which is selected from the group  $\text{Al}_2\text{O}_3$  and anodic oxidized aluminum. Sabia utilizes an  $\text{Al}_2\text{O}_3$  coating on a polarizer, but labels it as an anti-reflection coating.

### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney E. Fuller whose telephone number is 571-272-2118. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Nguyen can be reached on 571-272-2258. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rodney E Fuller  
Primary Examiner  
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May 25, 2006